

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**



PART V

**LOCAL RULES OF
PRACTICE AND PROCEDURE
IN BANKRUPTCY
FOR THE
DISTRICT OF VERMONT**

Cite these Rules as "VLBR"
Amended May 1, 1992

**PART V
LOCAL RULES OF PRACTICE AND PROCEDURE IN BANKRUPTCY
FOR THE DISTRICT OF VERMONT**

EFFECTIVE MAY 1, 1988

******* Amended May 1, 1992 *******

VLBR 1001-A

THE BANKRUPTCY COURT

The serving Bankruptcy Judge for this District constitutes and shall be known as the "United States Bankruptcy Court for the District of Vermont."

VLBR 1001-B

SCOPE OF RULES AND FORMS; SHORT TITLE

The Local Rules of Practice and Procedure in Bankruptcy for the District of Vermont govern procedure in the United States Bankruptcy Court for the District of Vermont in cases under Title 11 of the United States Code. The Rules shall be cited as Vermont Local Bankruptcy Rules (VLBR) and the forms shall be known as the Official Vermont Local Bankruptcy Forms. These Rules shall be construed to secure the expeditious and economical administration of every case under the Code and the just, speedy, and inexpensive determination of every case and proceeding therein. Cases and adversary proceedings which are transferred or withdrawn to the District Court shall be governed by Part I of the Local Rules of Procedure for the District Court.

These Rules are to apply generally to all bankruptcy matters. The Rules, however, are not to be considered all encompassing in that certain special circumstances might necessarily arise which require the Court to permit exceptions.

Local Rules for the District Court pertaining to Admissions and Discipline of Attorneys; Trial by Jury; Requests for Jury Instructions and Requests to Charge; and, Jury Costs in Civil Actions are contained in other parts of these Rules.

These Rules may be made and amended by action of the Judges of the United States District Court for the District of Vermont.

NOTE: REFERENCES CONTAINED IN THIS EDITION OF THE VERMONT LOCAL BANKRUPTCY RULES TO THE OFFICIAL VERMONT LOCAL BANKRUPTCY FORMS MAY BE INCORRECT. THE LOCAL BANKRUPTCY FORMS ARE CURRENTLY IN REVISION AND WILL BE SUPPLEMENTED, WHICH MAY ALTER THEIR PRESENT NUMBERING.

**PART I
COMMENCEMENT OF CASE; PROCEEDINGS
RELATING TO PETITION AND
ORDER FOR RELIEF**

VLBR 1002

COMMENCEMENT OF CASE

- (a) **Number of Copies.** An original and three (3) copies of all petition packages requesting relief under Chapters 7, 12, and 13 of the Code, and/or an original and six (6) copies of all petitions requesting relief under Chapters 9 and 11 of the Code, shall be filed with the Clerk of the Bankruptcy Court.
- (b) **Sequential Order of Documents for Filing.**
 - (1) All petition packages filed in Chapters 7, 11, 12, and 13 of the Bankruptcy Code shall contain the following documents in the following order:
 - (A) Voluntary Petition (Involuntary Petition);
 - (B) Exhibit A to Voluntary Petition (Chapter 11 only);
 - (C) Declaration under Penalty of Perjury on Behalf of an Individual, Corporation or Partnership;
 - (D) List of Creditors Holding 20 Largest Unsecured Claims (Chapter 11 only);
 - (E) Summary of Schedules, Schedules A-J in proper alphabetical order;
 - (F) Statement of Financial Affairs;
 - (G) Chapter 7 Individual Debtor's Statement of Intention;
 - (H) Statement Pursuant to Rule 2016(b) (attorney's fees);
 - (I) The requirements of VLBR 1007(b), (c), and (d) (Chapter 11 only);
 - (J) The requirements of VLBR 4002(a) (Chapter 11 only);
 - (K) Official Vermont Local Bankruptcy Form No. 13;
 - (L) The appropriate filing fee or installment fee;

- (M) Application and Order to Pay Filing Fee in Installments;
 - (N) Proposed Operating Order (**see**, VLBR 2015(a)(1)); and
 - (O) Master Mailing Matrix; and
 - (P) Mailing Matrix of the Twenty (20) Largest Unsecured Creditors (Chapter 11 only) (**see**, VLBR 1002(h)).
- (2) All the foregoing documents shall be reproduced in the appropriate number (**see**, VLBR 1002(a)) with carbons removed and packages collated, and bound together with staples prior to submission to the Clerk's Office for filing. The proposed operating Order and the mailing matrix(es), however, shall not be bound to the individual petition packages, but rather, annexed loosely at the end of the packages.
- (c) **Emergency and Short-Notice Filings (Bare Bones Filings).**
- (1) Emergency filings under Chapters 7, 12, and 13 must contain, at a minimum, the following:
- (A) Voluntary Petition;
 - (B) The appropriate filing fee or installment fee; and
 - (C) Master Mailing Matrix.
- (2) Emergency filings under Chapter 11 must contain, at a minimum, the following:
- (A) Voluntary Petition;
 - (B) List of Twenty (20) Largest Unsecured Creditors;
 - (C) The requirements of VLBR 1007(b), (c), and (d);
 - (D) The appropriate filing fee or installment fee;
 - (E) Master Mailing Matrix; and
 - (F) Mailing Matrix of the Twenty (20) Largest Unsecured Creditors (**see**, VLBR 1002(h)).

- (3) All the foregoing documents shall be reproduced in the appropriate number (**see**, VLBR 1002(a)) with carbons removed and packages collated, and bound together with staples prior to submission to the Clerk's Office for filing. The mailing matrixes, however, shall not be bound to the individual petition packages, but rather, annexed loosely at the end of the packages.
- (d) **Filing Fees.** All petitions must be accompanied by the appropriate fee. Debtor's checks are not accepted. An application to pay in installments may be filed with the Clerk's office. **See also**, VLBR 9083.
- (e) **Hours/Place for Filing.** The Office of the Clerk of the Bankruptcy Court shall be maintained at The Opera House, 67 Merchants Row, Post Office Box 6648, Rutland, Vermont 05702-6648, phone number (802) 773-0219. The FAX number is (802) 773-0315. Petitions and all other pleadings shall be filed in the Office of the Clerk of the Bankruptcy Court between 8:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays.

The phone number for Judge's Chambers is (802) 773-0317. The phone number for the Law Clerk is (802) 773-0266.

- (f) **Master Mailing Matrix.** The following format is required for optical scanning purposes. Master mailing matrixes (as well as mailing matrixes of the Twenty (20) Largest Unsecured Creditors) shall adhere to the ensuing instructions:
- (1) Lists must be typed in Courier 10 pitch typeface only;
 - (2) Lists must be typed on plain 8½"X 11" paper in a single and straight center column format on each page of the matrix;
 - (3) Upper (capital) and lower letters must be used;
 - (4) Each name/address must consist of no more than five (5) total lines with at least one blank line between each of the name/address blocks;
 - (5) Nine digit zip codes must be typed with a hyphen between the fifth and sixth digits. DO NOT type attention lines or account numbers on the last line; put these on the second line of the name/address if needed;
 - (6) No line may exceed 40 characters in length;

- (7) DO NOT INCLUDE THE NAME/ADDRESS OF THE FOLLOWING PERSONS ON THE MATRIX: Debtor; Joint Debtor; Attorney for the Debtor.
- (8) ALWAYS INCLUDE THE FOLLOWING NAMES/ADDRESSES AS INDICATED, IN THE FOLLOWING ORDER:

IRS/Special Procedures
199 Main Street
Burlington, Vermont 05401-8345, or the name and current address of the Internal Revenue Service Director of the appropriate District;

Bankruptcy Unit
Vermont Department of Taxes
P.O. Box 694
Montpelier, Vermont 05601-0694, or the name and current address of the local income tax department;

The United States Trustee
50 Chapel Street
Albany, New York 12207; and lastly,

In alphabetical order, the name and last known mailing address, including zip code, of every scheduled creditor.

The master mailing matrixes shall include those agencies and officers of the United States required to receive notice in Federal Rules of Bankruptcy Procedure Rule 2002(j). The filing of the mailing matrixes shall be a certification that it is a complete and correct list of all the creditors of the debtor.

The United States Attorney for the District of Vermont, 615 Federal Building, P.O. Box 570, Burlington, Vermont 05401, at its request, shall be added to the mailing matrixes only if the papers filed in the case disclose a debt, including taxes, to the United States, and in which case, the matrixes shall also identify the Federal agency with the potential claim or interest.

- (g) **Amendments to Matrixes.** If the debtor's address changes, the debtor becomes aware of a change in address of any creditor or party in interest, or it becomes necessary to add or delete creditors from the mailing matrixes, such changes shall be accomplished by amendment to the matrix, and not by correspondence. The attorney for the debtor shall file with the Clerk a notice of amendment to matrixes, which shall certify that all address changes for the debtor and additional or deleted creditors are complete, correct, and current. Amendments may not be filed via electronic media.

- (h) **Additional Matrix.** To ensure prompt noticing of the Creditors' Committee Organizational Meeting in Chapter 9 and Chapter 11 cases, the debtor shall attach to the list of twenty (20) largest unsecured creditors, excluding insiders, a separate mailing matrix containing the names and complete mailing addresses for each creditor listed. The same procedure will be followed whenever a committee of equity security holders is to be organized.
- (hh) **Alternative Submission of Matrix(es).** The Clerk will accept both the master mailing matrix, as well as the additional matrix required for the twenty (20) largest creditors on 5¼" floppy disks. If you choose to use this method to submit the matrixes, the following criteria shall be adhered to:
- (1) The master mailing matrix and the additional matrix for the twenty (20) largest creditors shall be submitted to the Clerk on separate floppy disks.
 - (2) Data must be in ASCII.
 - (3) Each name and corresponding address for the master mailing matrix shall be listed in the order dictated by subsection (f)(8).
 - (4) Each name and corresponding address (known as a record) must be on a single line.
 - (5) Records may consist of up to five fields of data, but the fields must not exceed 40 characters in length. The first field **MUST** contain the creditor/governmental agency name. Use the remaining fields for the address.
 - (6) The pipe symbol, or verticle bar (|), is to be used to separate fields. If your keyboard does not contain such a symbol, please contact the Computer Systems Manager at the Court for advice as to acceptable alternatives. **DO NOT USE A LETTER, DIGIT, OR UNDERSCORE TO SEPARATE FIELDS.**

EXAMPLES: John Grimm| 24 Hardway Avenue| Rutland, VT 05701
The Store| Attn. Joe Smit| 1 Easy Street| Apt. 12| Barre, VT 05641

- (i) **Deficient Filing.** The Clerk will not accept for filing any papers not in substantial compliance with the Statutes and Rules. The Clerk will return deficient filings with an explanation. This subsection does not apply to adversary proceedings or any other matters designated to be governed by Part VII of the Federal Rules of Bankruptcy Procedure.

- (j) **FAX Filings.** The Clerk's Office will not accept facsimile filings, except in the event of emergency situations. In such instances, facsimile filings will be permitted; however, the original document, together with a transmittal letter indicating the original is a follow-up to a facsimile filing, as well as the date of the facsimile transmission, must be mailed simultaneously to the Clerk. The Court will determine what types of situations constitute an emergency.

In those instances where facsimile filings are accepted, the filing date will be the date the facsimile copy is received.

VLBR 1002 COMMENT

The purpose of this local Rule is to ensure prompt service to the parties the Court serves, and to reduce the Clerk's Office's work load.

Federal Rules of Bankruptcy Procedure Rule 5001 provides that Bankruptcy Courts "shall be deemed always open." The intent of subsection (e) of this Rule is to establish uniform hours for the Office of the Clerk; it does not preclude the exercise of discretion in emergency situations that require attention outside of these hours as contemplated by Federal Rules of Bankruptcy Procedure Rule 5001. See also Fed.R.Civ.P. 6(a).

VLBR 1003-1006 Reserved

VLBR 1007

LISTS, SCHEDULES, AND STATEMENTS; TIME LIMITS

- (a) **Disclosure.** Every petition filed in this Court under any Chapter shall affirmatively disclose whether there are filings pending in this Court, or any other Bankruptcy Court, of any other bankruptcy of a related affiliate, partnership, individual, or any other entity that justifies such disclosure.
- (b) **Corporate Resolution.** A voluntary petition or consent to an involuntary petition filed by a corporation shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such filing.
- (c) **Debtor's Affidavit to be Filed in Chapter 11 Cases.** In addition to the requirements of the Federal Rules of Bankruptcy Procedure, a debtor in a Chapter 11 case shall file an affidavit setting forth:
- (1) if the case was originally commenced under Chapter 7, 12, or 13, the name and address of any trustee appointed in such Chapter 7, 12, or 13 case;

- (2) the names and addresses of the members of any committee and any attorney for such committee, organized prior to the Order for relief in a Chapter 11 case, and a brief description of the circumstances surrounding the formation of any committee and the date of its formation;
 - (3) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under Chapter 11;
 - (4) the number and classes of shares of stock, debentures or other securities of the debtor which are publicly held, and the number of holders thereof, listing separately those held by the debtor's officers and directors and the amounts so held;
 - (5) a list of all property of the debtor in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor or agent for any such person, giving the name, address, and telephone number of such person and the Court, if any, in which a related proceeding is pending;
 - (6) the nature and present status of each action or proceeding pending or threatened against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent; and
 - (7) a list of the premises owned, under lease, or held under other arrangement from which the debtor operates its business; and
- (d) **Additional Information if Business is to Continue Operating.** If the Chapter 11 debtor intends to continue the operation of its business, the affidavit shall so state and set forth:
- (1) the estimated amount of weekly payroll to employees (exclusive of the officers, partners, stockholders, and directors) for the thirty (30) day period following the filing of the Chapter 11 petition;
 - (2) the amount paid and proposed to be paid for services for the thirty (30) day period following the filing of the Chapter 11 petition:
 - (A) if a corporation, to officers, stockholders, and directors;
 - (B) if an individual or a partnership, to the individual or the members of the partnership; and

- (C) if a consultant has been retained, to such consultant.
- (3) a schedule setting forth for the thirty (30) days following the filing of the petition estimated cash receipts and disbursements, net cash gain or loss, accrued but unpaid obligations other than professional fees, and any other information relevant to an understanding of the foregoing.
- (e) **When to File.** In a voluntary Chapter 11 case, the affidavit shall accompany the petition. In an involuntary Chapter 11 case, the affidavit shall be filed within fifteen (15) days after the entry of the Order for relief or after the filing of a consent to the petition, whichever is earlier.
- (f) **Waiver of Requirements.** On application of the debtor and notice to the United States Trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the Court may dispense with any of the foregoing provisions, except that the affidavit shall contain the information required by paragraphs (1), (2), and (3) of subsection (c) of this Rule.

VLBR 1007 COMMENT

The purpose of this Rule is to ensure reasonable preliminary cash collateral Orders and to bring to the Court early and succinct knowledge about the case.

VLBR 1008 Reserved

VLBR 1009

AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS

- (a) **Amendments.** All amendments must include the case name and docket number. The debtor shall serve a copy of the §341(a) meeting notice to any new creditor added with a certificate of service to the Court.
- (b) **Interlineation.** No amendments by interlineation shall be permitted. The entire page or pages which the amendment(s) affects shall be redrafted with the amendment highlighted or underlined and in such manner that the amended page(s) will be complete without referring to the page or pages which have been amended. Changes to schedules may require similar amendment procedures. Any photocopy reproductions of a highlighted page must be manually re-highlighted.

VLBR 1009 COMMENT

This Rule ensures due process to creditors and other parties in interest.

VLBR 1010-1013 Reserved

VLBR 1014

DISMISSAL AND CHANGE OF VENUE

- (a) **Singular District Venue.** Venue of a bankruptcy case within the District of Vermont will be indicated by the debtor's residence in the State of Vermont. The Court, in its discretion, may hold any hearing in any bankruptcy case anywhere within the District for the convenience of the Court or the parties. On motion by the debtor at the time of filing, the Court may determine that hearings be held at a particular location within the District for the convenience of the parties.

VLBR 1015

CONSOLIDATION OR JOINT ADMINISTRATION OF CASES

- (a) **Husband and Wife.** A husband and wife commencing a joint case shall file a single petition and pay only one filing fee. Debtors filing jointly shall file a single set of schedules and statement of affairs. If an item on a schedule or statement requires a different response from each debtor, the responses shall be labeled (H) or (W). Each asset and liability listed on the schedules or the statement of debtors filing jointly will be considered to be scheduled as community in character, or joint in nature, unless otherwise indicated.

The estates of debtor spouses filing a joint petition are consolidated for all purposes, unless at or before the meeting of creditors the trustee or other party in interest objects to such consolidation. The effect of such consolidation in a case under Chapter 7 shall be to combine in a single pool the liabilities of whatever character of both debtors, and to authorize distribution of the proceeds of the assets of whatever character similarly combined.

- (b) **Companion Case.** When a Title 11 USC petition is a companion case to a pending Title 11 USC case in this District, the petitioner shall attach to the petition a written statement notifying the Clerk that it is a companion case and stating the name and docket number of the bankruptcy case to which it relates. A companion case is defined as one filed by a spouse of the petitioner; by a corporation, partnership, or other business entity of which the petitioner is an owner, majority stockholder, officer, director, or partner; or by an owner, major stockholder, officer director, or partner of the petitioner.

VLBR 1016 Reserved

VLBR 1017

DISMISSAL OR CONVERSION OF CASE; SUSPENSION

- (a) **Dismissal of Related Title 11 Proceedings and Matters.** Whenever a case under the Bankruptcy Code is dismissed by a Court Order, any related adversary proceeding or matter then pending in which a final judgment or Order has not been entered shall likewise be deemed dismissed without prejudice and without further Order of the Court, unless the Court directs otherwise.

VLBR 1018-1019 Reserved

**PART II
OFFICERS AND ADMINISTRATION; NOTICES;
MEETINGS; EXAMINATION; ELECTIONS;
ATTORNEYS AND ACCOUNTANTS**

VLBR 2001 Reserved

VLBR 2002

**NOTICES TO CREDITORS,
EQUITY SECURITY HOLDERS, UNITED STATES,
AND UNITED STATES TRUSTEES**

The Bankruptcy Court Clerk is authorized to designate the parties who shall provide notice to creditors and parties in interest as required under the Federal Rules of Bankruptcy Procedure and the Vermont Local Bankruptcy Rules.

- (a) **Persons Responsible for Giving Notice.** As provided in Federal Rules of Bankruptcy Procedure Rule 2002, and unless for cause shown the Court directs otherwise, the notices required by Federal Rules of Bankruptcy Procedure Rule 2002(a) may be given not by the Clerk but by any entity other than the Chapter 7 trustee and the U.S. Trustee who:

- (1) proposes to use, sell, or lease property other than in the ordinary course of business;
 - (2) files a motion to compromise or settle a controversy, including any stipulated motion and Order, unless for cause shown the Court directs that notice not be sent;
 - (3) files a reaffirmation agreement, an objection to proof of claim, or an objection to exemption;
 - (4) files a motion for dismissal or conversion of any Chapter case; or
 - (5) files an application for the allowance of interim compensation or reimbursement of expenses totalling in excess of \$2,000. **See also, VLBR 9076.**
- (b) **Plans.** The proponent of a plan, modified plan, or amendment to a plan, in any Chapter case shall give notice of the time fixed for accepting or rejecting the proposed plan, amendment, or modification.
- (c) **Notice of Intent.** Any notice of intent to be given to all creditors under Federal Rules of Bankruptcy Procedure Rule 2002 or the filing of a motion or application for interim compensation shall be prepared and mailed by the entity proposing the action. A notice of intent shall substantially conform to Official Vermont Local Bankruptcy Form No.2. All notices of intent filed with the Clerk must be accompanied by a certificate of service.
- (d) **Initial Stipulated Cash Collateral Orders.** All stipulated cash collateral Orders that are made at the beginning of a case, and if conditionally approved by the Court, will be noticed to all creditors under subsection (e) below. If no objections are received by the Clerk within the time allowed for objections, the Order will become final. This expanded due process to creditors will not bar the use of cash collateral during the objection period.

- (e) **Noticing Procedure.** Whenever an attorney or a party gives notice and opportunity for hearing under 11 USC §102(1), the notice shall provide a minimum of ten (10) days, twenty (20) days, or twenty-five (25) days as required by Federal Rules of Bankruptcy Procedure Rule 2002, or fifteen (15) days for cash collateral Orders. The notice shall be mailed by the moving party to all creditors, the debtor, the trustee, and other persons as appropriate or required. A certificate of service of the mailing of the notice shall be submitted forthwith to the Clerk's Office. A proposed Order on notice and opportunity (**see**, VLBR 9076) and a proposed Order granting the action requested (**see**, VLBR 9075) must be submitted to the Court with the moving papers. A certificate of mailing shall accompany the proposed action Order.

The notice (**see**, VLBR 9076), in writing, shall set forth:

- (1) a statement of the action proposed to be taken or the Order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or Order;
 - (2) a blank line upon which the Clerk shall insert the date by which objections concerning the proposed action or Order shall be served and filed. Any timely objections filed shall be deemed by the Court as a request for a hearing. The Order may be entered without a hearing unless a timely objection is made to the Clerk of Court; and,
 - (3) if an objection is foreseen and a prompt hearing is needed, the date when a hearing will be held if a timely objection is made. The date may be obtained from the Clerk's Office.
- (f) Fee applications for less than \$2,000 may be treated as ex parte applications, but notice must be sent to the U.S. Trustee. (**See**, VLBR 9076).

VLBR 2002 COMMENT

The purpose of this Rule is to shift costs to the litigant(s) and to expedite the processing of notices, motions, and applications that are uncontested.

VLBR 2003-2009 Reserved

VLBR 2010

**QUALIFICATION BY TRUSTEE;
PROCEEDING ON BOND**

- (a) **Reimbursement of Blanket Bond Premiums.** All trustees covered by a Chapter 7 blanket bond, at the request of the U.S. Trustee, may be reimbursed for pending Chapter estates under the following conditions:
- (1) The trustee must execute one check or money order for the entire bond premium and provide copies of that check to the Office of the U.S. Trustee.
 - (2) Checks may be executed from the individual estates at the rate provided by the surety and approved by the U.S. Trustee, with copies of those checks provided to the Office of the U.S. Trustee.
 - (3) The aggregate amount of the individual checks may not exceed the total premium paid.
 - (4) If the aggregate amount of the individual checks will exceed the amount of the premium paid, the trustee shall allocate the premium pro rata from all pending cases.

VLBR 2011-2014 Reserved

VLBR 2015

**DUTY TO KEEP RECORDS, MAKE REPORTS, AND
GIVE NOTICE OF CASE**

- (a) **Operation of Business.**
- (1) **Operating Order.** No debtor-in-possession may operate a business unless an Order authorizing the debtor to continue business has been entered by the Court. This Order shall issue forthwith, without application, when a petition is filed under Chapter 11, 12, or 13, as appropriate, and shall be substantially the same in form as Official Vermont Local Bankruptcy Form No. 3 for Chapter 11; Official Vermont Local Bankruptcy Form No. 4 for Chapter 12; and Official Vermont Local Bankruptcy Form No. 5 for Chapter 13. All petitions filed under Chapter 11, 12, or 13 shall be accompanied by a proposed Operating Order.

- (2) **Books and Records.** The debtor-in-possession shall, upon filing its petition, close and preserve its present books and accounts and open and maintain new books of account showing all income, expenditures, receipts and disbursements, and all other necessary financial information of the debtor while a debtor-in-possession.
- (3) **Reports Required During Operation of Business.** A trustee or debtor-in-possession who operates the business of a debtor shall file with the Clerk not later than the fifteenth (15th) day of each month, the reports and summaries required by §704(8) of the Bankruptcy Code.
- (4) **Segregation and Payment of Taxes.** A trustee or debtor-in-possession who is responsible for withholding taxes from the salaries of employees, or the collection of taxes on behalf of the United States or any State or political subdivision thereof, shall segregate and deposit the taxes withheld and paid on behalf of employees in an account separate from the general funds of the estate. In small cases, this requirement may be waived upon application, with notice to the U.S. Trustee, and Order of the Court.
- (5) **Filing Returns and Payment of Taxes.** A trustee or debtor-in-possession shall prepare and timely file any tax returns required of him by law to be filed with any Federal or State taxing agency, or any political subdivision thereof, and, if appropriate, remit with the returns any taxes then due and payable.
- (6) **Officer's Salaries.** The Order allowing a corporate or individual debtor-in-possession to continue to operate the business, VLBR 2015(a)(1), or a separate Order, shall fix the salaries of corporate officers and executives and the amount which an individual debtor may withdraw, and neither the corporate officer or executive nor an individual debtor shall receive a compensation greater than the amount fixed by the Order during the pendency of a proceeding without a specific Order entered by the Court authorizing such an increase.

Orders fixing compensation under this subsection of this Rule are subject to review and objection upon motion of the U.S. Trustee, a creditor, or any party in interest.

- (7) **Inventory Report.** The debtor-in-possession shall file a verified report at the end of each four-week operating period setting forth a detailed inventory of the stock in trade and accounts receivable and showing the beginning inventory and the closing inventory at the end of the accounting period. This report may be waived, on request, if the debtor-in-possession is using an inventory method other than a perpetual or a specific identification method.
- (8) **U.S. Trustee Guidelines.** The debtor-in-possession is to comply with all appropriate guidelines issued by the U.S. Trustee. The guidelines shall be issued by the U.S. Trustee's Office.
- (9) **Sanctions.** Should the debtor-in-possession fail to comply with any provision of this Rule, the Court may enter an appropriate Order imposing such sanctions as may be proper under the circumstances including, but not limited to, the revocation of the authorization to continue the operation of the business, or dismissal.
- (b) **Post Confirmation Reports in Non-Liquidation Chapter 11 Cases.** Ninety (90) days after an entry of an Order of confirmation, or within such other time as the Court may direct, the debtor or the trustee shall file a report with the Clerk of Court and shall serve a copy on any creditors' or equity security holders' committees appointed in the case and on the U.S. Trustee. The report shall set forth the actions taken and progress made toward the consummation of the plan, including a detailed account of all payments made. The Court may also direct the filing of additional reports.
- (c) **Final Report in Chapter 11 Cases.** A debtor-in-possession in a liquidating Chapter 11 case, or a Chapter 11 trustee, if one has been appointed, within ninety (90) days after completion of distribution, or other such time as the Court may direct, shall file with the Clerk of Court, and with the U.S. Trustee the latest original bank statement together with cancelled checks, a statement of unclaimed checks upon which "stop payment" orders have been issued, and a statement of securities, money, and other property held by the trustee that have been or may be claimed by another person with rights in such property under 11 USC §347(b). This report shall include an affidavit that states the provisions of the confirmation Order have been complied with or an explanation about any variance or deviation from the Order.
- (d) **Final Report in Chapter 12 or 13 Cases.** The trustee in a Chapter 12 or 13 case shall file a final report with the Clerk of Court, and with the U.S. Trustee. Such report shall contain the following:

- (1) a statement that the trustee has made a distribution in accordance with the order confirming the debtor's plan, and any other applicable orders;
- (2) the total distribution to the creditors;
- (3) the amount withheld as the trustee's fee or commission; and
- (4) an affidavit that states that the provisions of the confirmation order have been complied with.

VLBR 2015 COMMENT

The purpose of this Rule is to ensure the case is properly administered and managed.

VLBR 2016

COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES

Any entity seeking interim or final compensation for services, or reimbursement of necessary expenses, in addition to the requirements under Federal Rules of Bankruptcy Procedure Rule 2016 must comply with the following guidelines.

The fee application shall be divided into services and expenses:

- (a) **Compensation of Services.** For services to be compensated there must be:
 - (1) **Adequacy of Documentation.**
 - (A) An adequate description (discrete entities, no lumping).
 - (B) A sufficient level of specificity to determine reasonableness and justification.
 - (2) **Compensability.**
 - (A) The professional service must be inherently compensable. For example, for lawyers, is it a legal service?
 - (B) The service must be compensable under the circumstances. For example, is it related to the bankruptcy case, not duplicative, etc?

(3) **Hourly Rate.**

- (A) There must be a correlation between the provider's level of expertise and the expertise required for the service. The Court will not compensate an attorney for a service that can be performed by a non-attorney.
- (B) The provider, the rate, and the hours must be summarized.

(4) **Travel.**

- (A) Travel time is compensable at one-half ($\frac{1}{2}$) the provider's rate, unless work was actually performed during the travel period.
 - (B) Out-of-state travel will not be compensated unless there is a special showing.
 - (C) Travel expenses, i.e., parking, tolls, and taxes are compensable with a showing of justification.
- (5) The arithmetic must add up or multiply across correctly.
 - (6) If more than one professional represents the debtor in a certain area there must be a special showing that the services rendered were not duplicative. This showing does not apply to auctioneers.
 - (7) Computer print-outs may be submitted provided they satisfy the above enumerated requirements.
 - (8) Hours must be broken down to the nearest one-tenth ($\frac{1}{10}$) of an hour.

(b) **Compensation of Expenses.** For expenses to be compensated there must be:

(1) **Adequacy of Documentation.**

- (A) An adequate description with date, amount, and justification of purpose. It may be appropriate to reference it to a service.

(2) Compensability.

- (A) The type of expense must be inherently compensable. For example, toll calls, but not local calls, may be compensable. The test is whether the item is variable as compared to normal fixed overhead. Rent, taxes, secretarial, etc., are considered overhead.
- (B) The expense must be justified under the circumstances. For example, express mail rather than regular mail.
- (C) Is the expense reasonable, i.e., car rental vs. a taxi; printer vs. office copier?
- (D) Photocopies are not compensable at a rate greater than fifty (.50) cents a copy, or actual cost.
- (E) Mileage is not compensable beyond the allowed IRS rate per mile.

- (c) **Ability to Pay for Services.** All compensation and expense applications to be paid by the estate and not by a third party must be accompanied by an analysis showing how the debtor has the ability to pay the compensation and expenses. Failure to provide the analysis may result in the application being approved but without an Order for disbursement.

The debtor shall also provide, in the form of an affidavit, that all administrative expenses of equal priority have been paid, or provided for.

VLBR 2016 COMMENT

This Rule applies to fee applications that may be applied against a pre-petition retainer.

In addition to the applicable statutory law, this Rule helps ensure that fee applications are addressed quickly by the Court. The Rule also provides some certainty to fee applications.

VLBR 2017-19 Reserved

**PART III
CLAIMS AND DISTRIBUTION
TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS**

VLBR 3001-3005 Reserved

VLBR 3006

WITHDRAWAL OF CLAIM OR ACCEPTANCE OR REJECTION OF PLAN

A notice of withdrawal filed under Federal Rules of Bankruptcy Procedure Rule 3006 shall be in writing and shall state the reasons for such withdrawal. If any consideration for the withdrawal has passed or will pass to the claimant or to any other person, the facts with respect to it shall be set forth in such notice. The Court may provide that notice of the withdrawal, the reasons, and any consideration be noticed to parties in interest.

VLBR 3007

OBJECTION TO CLAIMS

Any party in interest may object to a claim. Any motion objecting to a claim must have annexed to it a copy of the claim and its attachments.

VLBR 3007 COMMENT

The purpose of this Rule is to provide a broader application of due process and participation by creditors in all cases.

VLBR 3008-3011 Reserved

VLBR 3012

VALUATION OF SECURITY

(a) Insurance on Motor Vehicles in Chapter 12 and Chapter 13 Cases.

- (1) Proof of Insurance.** Proof of insurance against physical damage and loss for any motor vehicle retained by a Chapter 12 or Chapter 13 debtor that is subject to the lien of a creditor holding an allowed secured claim shall be furnished to the trustee and the creditor at or before the §341 Meeting. Failure to furnish proof of insurance shall be presumed to mean that no insurance is in effect. "Motor vehicle" shall include, but is not limited to, any mobile home or house trailer designed for travel on the public highways and/or capable of travel on the public highways. "Proof of insurance" shall mean a certificate of insurance, or such other written evidence of sufficient reliability from the insurance carrier stating that insurance is in force, the amounts and types of coverage, a notation of the secured party as a loss payee, and the time period for which such coverage exists.

(2) **Lapse of Insurance.** If during the pendency of a Chapter 12 or Chapter 13 case insurance lapses on any motor vehicle subject to the provisions of this Rule:

- (A) A creditor with an allowed claim secured by the motor vehicle for which insurance has lapsed shall notify, in writing, the debtor and the debtor's attorney of such lapse of insurance. Service of such notice upon the debtor and the debtor's attorney shall be in the manner as specified in Federal Rules of Bankruptcy Procedure Rule 7004(b).
- (B) The debtor shall be enjoined from using the motor vehicle for which insurance has lapsed as long as the motor vehicle remains uninsured.
- (C) If the debtor fails to provide proof of re-insurance to the creditor within five (5) business days following delivery of the notice provided in subsection (A) of this section, the debtor shall surrender the motor vehicle to the creditor or the creditor may take possession of the motor vehicle securing its claim and hold the same pending presentation of proof of insurance.
- (D) Within five (5) days after taking possession of a motor vehicle under subsection (a)(2)(C) of this section, the creditor shall file with this Court a motion for relief from the stay of §362.

In the event insurance on a motor vehicle subject to this Rule lapses twice during the pendency of a Chapter 12 or Chapter 13 case, the Court may, upon the filing of a motion in accordance with subsection (a)(2)(D), accompanied by an affidavit evidencing compliance by the creditor with the provisions of this Rule and evidencing the previous lapse of insurance coverage, grant the creditor relief, including relief from stay under §362, without further hearing.

VLBR 3012 COMMENT

The purpose of this Rule is to eliminate a perceived abuse by debtors who take unnecessary insurance risks with collateral that is typically worth less than the claim it secures.

VLBR 3013

CLASSIFICATION OF CLAIMS AND INTERESTS

- (a) **Motion on Chapter 11, 12, or 13 Claims Post-Confirmation.** Unless otherwise ordered by the Court, any motion objecting to the allowance a claim, either in whole or in part, which is based on a debt incurred prior to the filing of the bankruptcy petition, shall be filed no later than ninety (90) days after the entry of an Order of confirmation.
- (b) At least ten (10) days prior to a confirmation hearing a debtor, the U.S. Trustee, creditor, or any party in interest may request a claim(s) classification hearing. Failure to object to claims classification within the time period allowed under this local Rule is deemed a waiver of any objection.

VLBR 3013 COMMENT

The purpose of subsection (b) is to encourage early resolution of classification disputes. Subsection (b) of this Rule is generally contained in the standard confirmation Order of this Court. Its placement here is to notify the debtor and his counsel or any other party in interest that there is a bar date to objection of claims. The other purpose this Rule will serve will be the elimination of surprise claim objections many months after a plan has been confirmed.

VLBR 3014

**ELECTION PURSUANT TO §1111(b) BY SECURED
CREDITOR IN CHAPTER 9 MUNICIPALITY AND
CHAPTER 11 REORGANIZATION CASES**

For cause shown and after notice and a hearing, the Court on application or motion may fix a time earlier than the conclusion of the disclosure statement hearing for the making of an §1111(b)(2) election.

VLBR 3015-A

**FILING OF PLAN IN CHAPTER 13
INDIVIDUAL'S DEBT ADJUSTMENT CASE**

- (a) **Analysis of Plan.** At the time of the filing of the plan, the debtor shall file an original and one (1) copy of a plan analysis. The plan analysis shall conform substantially to Official Vermont Local Bankruptcy Form No. 6.

- (b) **Failure to File Plan.** Failure to file a Chapter 13 plan within fifteen (15) days of the date of filing of the petition, or within such period to obtain a Court approved extension as provided in Federal Rules of Bankruptcy Procedure Rule 1007, shall be cause for dismissal without further notice.
- (c) **Contents of Plan.** All automobile payments and mortgage payments must be made through the trustee unless the debtor is current on these payments, or the value of the car or the security for the mortgage is greater than the claim.
- (d) **Approval of Plan.** No plan will be approved if the debtor is not current on automobile and home mortgage payments provided for in the plan post-petition.
- (e) **Objections to Confirmation of a Chapter 13 Plan.** An objection to confirmation must be filed as a separate document in writing within five (5) days of the final §341(a) Meeting or it will not be considered by the Court.
All properly filed objections to confirmation shall be set for hearing by the Court after notice. When a hearing is set on a properly filed objection, only the objecting creditor, the debtor, the debtor's attorney, and the standing trustee will be noticed. The objecting party must serve a copy of the written objection on the debtor, the debtor's attorney, and the standing trustee at the time of filing, and a voluntary withdrawal of an objection to confirmation must be filed and served in like manner.
- (f) **Confirmation of Chapter 13 Plans.** It shall be the practice of this Court that following the §341(a) Meeting, if the trustee recommends confirmation, the plan meets the requisite legal criteria, and there were no properly and timely filed objections to confirmation, an Order of confirmation will be tendered to the Court for consideration without further notice.
- (g) **Adjourned §341(a) Meeting.** In the event a §341(a) Meeting is adjourned, the confirmation hearing date is automatically adjourned. The debtor must obtain a new plan confirmation hearing date from the Clerk's Office, and notify all parties on the mailing matrix of the new adjourned plan confirmation date.
- (h) **Plans Exceeding Three (3) Years.** If a Chapter 13 plan proposes payments to creditors over a period that exceeds three (3) years, the debtor shall file an application on notice to the standing trustee and all creditors setting forth the reasons.

- (i) **Claims and Objections to Claims.** For all secured claims and tax claims, the Chapter 13 trustee shall pay the lesser amount of the claim or the amount provided in the confirmed plan.
- (j) **Payments to Trustee.** A payroll deduction order for plan payments may be issued upon confirmation of the plan. Until a payroll deduction order is effective, all plan payments shall be made directly by the debtor in the form of cashier's check, certified check, or money order made payable to "Chapter 13 Trustee" and sent directly to the Chapter 13 trustee.
- (k) **Tax Returns.** After the confirmation of a plan, the debtor shall provide a copy of his or her Federal tax return each year to the Chapter 13 trustee, and thereafter until a discharge is entered or the case has been dismissed or converted.
- (l) **Sale or Refinancing of Property.**
 - (1) Unless the debtor uses the procedure described in subsection (2) hereof, any sale or refinancing of the debtor's principal residence or other real property must be approved by the Court upon notice to all creditors.
 - (2) If the debtor wishes to use the proceeds of the sale or refinancing of property to fund the Chapter 13 plan, the debtor may request a certificate of approval from the Chapter 13 trustee. Ten (10) days notice to creditors of the sale of property must be given. The Chapter 13 trustee may also issue a certificate of approval, on like notice, to authorize the debtor to use the proceeds of the refinancing of property to repay existing encumbrances.
- (m) **Applications for Dismissal or Conversion.** An application by the debtor to dismiss a Chapter 13 case or to convert it to a case under another Chapter of the Code shall state whether the case has previously been converted from another Chapter and shall be served on all creditors, the U.S. Trustee, and the Chapter 13 trustee. Unless otherwise Ordered by the Court, dismissal or conversion is effective on the date of entry of the Order.
- (n) **Attorney Representation.** An attorney who is retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on all matters arising in the case, including any relief from stay motions, claims, or adversary proceedings.
 - (1) Where such representation requires additional services, application may be made for supplemental fees.

- (2) A substitution of attorneys for the debtor may only be made after a hearing except where, after the substitution, the debtor is still represented by counsel.
 - (3) If an attorney for a debtor is unable to contact the debtor in connection with a motion for relief from stay, and in consequence is unable to offer any grounds opposing the motion, the attorney may serve and file a statement informing the Court of the efforts made to contact the debtor.
 - (4) If a debtor does not oppose a motion for relief from stay, the attorney must file a statement so informing the Court.
- (o) **Notice and Hearing for Debtor's Attorney's Fee to be Treated as Administrative Expense Under Chapter 13.** If the compensation or any portion thereof of the attorney for a Chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the standing trustee and to all creditors. If the debtor's plan is transmitted to all parties in interest, and it states with particularity the time and amount of any payments to be made to the attorney, it shall be deemed adequate notice.

VLBR 3015-A COMMENT

This Rule supplies in great detail the local procedures for Chapter 13 cases to ensure the debtor quickly begins payment on the claims.

VLBR 3015-B

FILING A PLAN IN CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASES

- (a) **Objections.** Objections to confirmation of the plan shall be filed with the Court and served on the debtor, the standing trustee, the U.S. Trustee, and on any other entity designated by the Court, within a time fixed by the Court. An objection to confirmation is governed by Federal Rules of Bankruptcy Procedure Rule 9014.
- (b) **Hearing.** After notice, the Court shall conduct and conclude a hearing within the time prescribed by §1224 of the Code and rule on confirmation of the plan. If no objection is timely filed, the Court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues.
- (c) **Retained Power.** Notwithstanding the entry of the Order of confirmation, the Court may enter all Orders necessary to administer the Chapter 12 estate post confirmation.

VLBR 3015-B COMMENT

This Rule serves the dual purpose of rapid confirmation or denial, and a post-confirmation jurisdiction retention to ensure rapid adjudication of disputes that may impede a plan's success.

VLBR 3016

FILING A PLAN AND DISCLOSURE STATEMENT IN CHAPTER 11 REORGANIZATION CASES

- (a) **Minimum Disclosure for all Disclosure Statements.** At a minimum, all disclosure statements must contain a narrative description of the history of the debtor and events leading up to the bankruptcy filing. In addition, a narrative description of the Chapter 11 filing and events therein must be made.
- (b) **Minimum Disclosure for Individuals Not Incorporated and Not in a Partnership.** In addition to the requirements of subsection (a) hereof, each disclosure statement for an individual, not incorporated, and not in a partnership, must have attached a copy of the latest income tax return for the year immediately preceding the disclosure statement filing; a projection of revenue and expenses for three (3) years with assumptions; or the minimum number of years the plan is to be completed, whichever is less; a liquidation analysis; and, if there is to be a "cram down" within the meaning of 11 USC §1129(b), a present value analysis of the indubitable equivalent offered the class to be "crammed down."
- (c) **Minimum Disclosure for all Liquidating Chapter 11 Cases.** In addition to the requirements of subsections (a), (b), (d)(5), (d)(6), and (e) hereof, disclosure statements for a liquidating Chapter 11 case shall include a projected or forecasted cash flows covering the proposed period of liquidation.
- (d) **Minimum Disclosure for Non-Liquidating Partnerships, Trusts, and Corporations Not Listed on a National Stock Exchange.** In addition to the narratives provided in subsection (a) hereof, all disclosure statements and plans must contain at a minimum:
 - (1) Compiled or reviewed financial statements with full footnote disclosure prepared and dated within sixty (60) days of the filing of the disclosure statement.
 - (2) Forecasted quarterly cash receipts and disbursements that, at a minimum, cover the first twelve to eighteen (12-18) months of any plan.

- (3) Projected or forecasted financial statements covering three (3) years or the plan expiration date if less than three (3) years, compiled or reviewed.
 - (4) Presentation of salary, wages, pension and bonus plans, etc., of top management, insiders, and directors for the first three (3) years of the plan, or a shorter period if the plan term is shorter.
 - (5) Presentation and/or calculation satisfying the requirements of 11 USC §1129(b)(2) if a secured creditor is impaired and 11 USC §1129(b) may potentially be invoked.
 - (6) Present value computation and schedules must be attached, if applicable.
 - (7) The contractual terms, if equity or debt securities are to be issued.
 - (8) Federal corporate tax returns for the immediate preceding tax period must be attached.
- (e) **Cram Down under 11 USC §1129(b).** Motions for a "cram down" under 11 USC §1129(b) will not be heard at the confirmation hearing unless a request is filed for such hearing ten (10) days before the scheduled confirmation hearing.

VLBR 3016 COMMENT

This Rule attempts to ensure adequate disclosure in order to avoid delayed confirmation hearings.

"Cram down" requests entail significant Court time. Requesting time for a cram down hearing in advance ensures adequate attention to the issues and allows for calendar planning.

VLBR 3017

COURT CONSIDERATION OF DISCLOSURE STATEMENT IN CHAPTER 11 REORGANIZATION CASES

- (a) **Supplemental Information.** If a disclosure statement has been noticed for hearing, and after hearing the debtor agrees to modify or supplement its disclosure statement or the Court so directs a modification or supplementation, such modification or supplemental data, upon proper finding of no need for additional hearing, may be appended to the disclosure statement without further notice of hearing prior to solicitation.

VLBR 3017 COMMENT

The purpose of this Rule is to advance the debtor toward a confirmation hearing.

VLBR 3018

ACCEPTANCE OR REJECTION OF PLANS

- (a) **Acceptances or Rejections Obtained Before Petition.** All plan acceptances or rejections solicited before the commencement of a case under the Code shall be filed with the Clerk and accompanied by all materials used in soliciting such acceptances or rejections. The Court shall, on request of a party in interest, hold a hearing to determine if the requirements of 11 USC Section 1126(b) have been met.
- (b) **Certification of Acceptances and Rejections of Plans.** At least three (3) days prior to the confirmation hearing, the proponent of the plan shall certify in writing to the Court the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served on the debtor-in-possession, trustee, if any, the U.S. Trustee, and any Court approved committee. On the basis of the certification the Court may find that the plan has been accepted or rejected. The hearing on confirmation shall not commence unless the certification has been timely filed unless, for good cause shown, the Court otherwise directs.
- (c) **Ballots.** The debtor must place the corresponding mailing matrix label on each blank ballot for each party to which a ballot is issued. Completed ballots are to be forwarded to the proponent of the plan, not the Clerk.

VLBR 3019 Reserved

VLBR 3020-A

ACCELERATED CHAPTER 11 CONFIRMATION PROCEDURE

- (a) **Designation of Chapter 11(a) Cases.**
 - (1) The Court for cause shown may at any time in its discretion, on motion of any party, Order that a Chapter 11 case be designated for accelerated treatment.
 - (2) A Chapter 11 case designated for accelerated treatment may be referred to as a Chapter 11(a) case.

- (3) The debtor, a creditor, an equity security holder, a creditors' committee, or other party in interest may at any time request that the Court reconsider a Chapter 11(a) designation.
 - (4) The Court for cause shown may at any time in its discretion, with or without motion or notice, Order that a Chapter 11(a) designation be rescinded.
- (b) **Time for Filing Plan and Disclosure Statement.**
- (1) The Court may fix a time within which the Chapter 11(a) debtor must file a plan and disclosure statement.
 - (2) The Court may at any time in its discretion, with or without motion or notice, reduce or extend any time fixed under subsection (1) hereof for filing a plan and disclosure statement.
 - (3) The failure of the debtor to propose a plan or to file a disclosure statement within a time fixed by the Court under subsection (1) or (2) hereof shall constitute cause for dismissing the case or converting the case to a case under Chapter 7 pursuant to 11 USC §1112(b)(4).
- (c) **Conditional Approval of Disclosure Statement, Objections, and Hearing.**
- (1) Under this local Rule the Court may conditionally approve a disclosure statement filed by a debtor under Chapter 11(a) prior to the giving of notice and a hearing on the plan. Conditional approval is presumed if the plan's proponent is permitted to solicit ballots.
 - (2) A disclosure statement that is conditionally approved by the Court may be transmitted to creditors and equity security holders under 11 USC §1125(c) and Federal Rules of Bankruptcy Procedure Rule 3017(d)(2) and may be used to solicit acceptances or rejections of a plan pursuant to 11 USC §1125(b). It must contain a statement that parties may file an objection to the disclosure statement and plan.
 - (3) Objections to disclosure statements in Chapter 11(a) cases shall be filed with the Court and served on the debtor, the trustee, if any, the U.S. Trustee, any committee appointed under the Code, and such other entity as may be designated by the Court, at any time prior to final approval of the disclosure statement or by such earlier date as the Court may fix.

- (4) If no objections or requests to modify the Chapter 11(a) disclosure statement are filed prior to the confirmation hearing or by such earlier date as the Court may fix, the conditional approval of the disclosure statement shall become final.
- (5) Any objections to requests to modify a Chapter 11(a) disclosure statement shall be considered at the confirmation hearing held under 11 USC §1128 and Federal Rules of Bankruptcy Procedure Rule 3020(b).
- (d) **Election under §1111(b) by Secured Creditor in Chapter 11(a) Reorganization Cases.** An election under §1111(b)(2) of the Code by a class of secured creditors in a Chapter 11(a) case must be made ten (10) days prior to the confirmation hearing date.
- (e) **Time for Filing Claims in a Chapter 11(a) Case.** The designation of a Chapter 11(a) case does not change any time periods for filing proof of claims unless otherwise Ordered by the Court.
- (f) **Disposable Income in Chapter 11(a) Cases.** At the confirmation hearing in a case under Chapter 11(a), the debtor must be prepared to disclose and offer evidence concerning the debtor's disposable cash income necessary to fund a plan for a period of three (3) years from the effective date of the plan.
- (g) **Contents of the Plan.** VLBR 3016 does not apply to VLBR 3020-A cases. The plan proponent may use or combine any section of VLBR 3020-A and VLBR 3016 to expedite the accelerated procedure so long as the disclosure statement satisfies 11 USC §§1123 and 1125.

VLBR 3020-A COMMENT

The purpose of this Rule is to eliminate the often unduly burdensome, time consuming, and inordinate expense requirements for less complex Chapter 11 debtors. It is conceivable that every Chapter 11 filing in Vermont could use this procedure.

VLBR 3020-B

CONFIRMATION HEARINGS - CHAPTER 11

- (a) The proponent of a plan of reorganization has the burden of confirmation. At least three business (3) days before the confirmation hearing, a proponent shall provide the following to the Court:

- (1) report on acceptances and rejections to proponent's plan of reorganization in substantially the same form as Official Vermont Local Bankruptcy Form No. 8;
- (2) affidavit relating to requirements under 11 USC §1129(b);
- (3) proposed findings of fact and Order regarding confirmation of the plan in substantially the same form as Official Vermont Local Bankruptcy Form No. 9; and
- (4) any other document necessary to plan confirmation.

VLBR 3020-B COMMENT

The purpose of this Rule is to provide attorney's guidance on the documents necessary for a confirmation hearing, and to avoid unnecessary evidentiary hearings on what is essentially a negotiated or unopposed plan.

VLBR 3021-3022 Reserved

PART IV THE DEBTOR: DUTIES AND BENEFITS

VLBR 4001

RELIEF FROM AUTOMATIC STAY; USE OF CASH COLLATERAL

- (a) **Motion.** Any motion for relief from the automatic stay, including a stipulated motion, shall include a copy of the proof of claim, and attachments, in the form required by Federal Rules of Bankruptcy Procedure Rule 3001. Relief from stay may be noticed under VLBR 2002(e). Proposed Orders must be submitted with each motion under this subsection.
- (b) **Contents of Such Motion.** Any motion under subsection (a) shall state the names and purported interests of all parties known or discoverable upon reasonable investigation to claim an interest in the property in question. The motion shall identify the property, and state the amount of the outstanding indebtedness and the fair market value of the property. The motion shall be accompanied by a legible and complete copy of all relevant loan and security agreements, and evidence of perfection, unless such documents are voluminous. A copy of any prior Orders of the Court upon which the motion relies shall be attached.

- (c) **Notice and Opportunity Relief from Stay Motions (Drop Dead Motions).** Relief from stay motions are permitted under the notice and opportunity provisions of the Bankruptcy Code and under VLBR 2002(e). If a party uses the notice and opportunity provisions, the automatic stay will remain in effect until the date set for objections has run and an Order granting relief is entered. Parties who utilize this Rule must provide notice allowing no less than twenty (20) days from the mailing of the notice to the date fixed for objections, if any, to be heard. If an objection is filed, the Notice and Opportunity Order shall be considered a finding of the Court that the stay shall remain in effect until a final hearing. (See also, VLBR 9007(b) and 9076).
- (d) **Final Hearing on Stay.** Within thirty (30) days after the filing of a motion for relief from stay, the Court shall hold a hearing on the motion. The hearing shall be a final evidentiary hearing, except in Chapter 11 and 12 cases, unless the Court directs otherwise. All hearings shall be governed by Official Vermont Local Bankruptcy Forms Nos. 10 and 11 issued scheduling the final hearing.
- (e) **Stipulation.** The trustee or debtor-in-possession may stipulate to relief from the stay. The stipulation shall describe the property or interest involved, including a statement as to its fair market value and any encumbrances thereon. A request to waive notice of stipulation may be granted upon a showing the case is a no assets case or the notice of stipulation to settlement will be unduly burdensome. No notice of stipulation is required if the parties have previously noticed the relief from stay hearing and either no party has objected or the Court has overruled the objection.
- (f) **Motions for Relief to Sue Debtors that Does Not Entail Property.** Any motion for relief to sue the debtor that does not entail property shall be governed by these Local Rules and shall be conducted substantially in the manner prescribed by Official Vermont Local Bankruptcy Form No. 12.
- (g) **Motion for Use of Cash Collateral.** A motion for use of cash collateral under 11 USC §362(c)(2) shall explicitly state the adequate protection offered the secured creditor. Appraisals and projections, to the extent pertinent, are to be summarized in the motion.

- (h) **Interim Hearing on Use of Cash Collateral.** The interim hearing may be a preliminary hearing conducted by telephone conference without transcript or recording. If a party desires a transcript they must provide the reporter or recording device. The parties may present testimony at the interim hearing only on request of a party and approval of the Court. In that event the interim hearing may be treated by the Court as a final hearing.
- (i) **Final Hearing on Use of Cash Collateral.** The Court may commence a final hearing on a motion to use cash collateral within fifteen (15) days after service of the motion. Upon emergency ex parte request, the Court may authorize before the fifteen day period expires the use of only that amount of cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In addition to the noticing requirements under the Code and Federal Rules of Bankruptcy Procedure, the final cash collateral hearing must be noticed to all parties on the matrix.

VLBR 4001 COMMENT

The purpose of subsection (c) of this Rule is expedite unopposed relief from stay motions and reduce the cost to litigants. The maintenance of the stay until the objection period has run is to ensure all statutory requirements are fulfilled.

VLBR 4002

DUTIES OF DEBTOR

- (a) **Notice on Disputed, Unliquidated, or Contingent Claims.** The filing of a Chapter 11 petition containing claims that are listed as disputed, unliquidated, or contingent requires the debtor to mail a notice by first class postage to each disputed, unliquidated, or contingent claimant stating that the debtor has filed bankruptcy and that the creditor's claim is disputed, unliquidated, or contingent. The debtor shall file with the petition, or within thirty (30) days thereafter, proof of service of this Rule's requirement.
- (b) **Need of Attention or Protection.**
 - (1) **Inventory or Equipment.** When a stock of goods or business equipment is scheduled, the debtor shall, immediately after the general description thereof, list a present inventory, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount and duration of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

- (2) **Need for Immediate Action.** If a stock of goods includes perishables or if property or the business premises otherwise need immediate attention or protection, the debtor or his attorney, when relief is ordered, shall so notify the Court and the trustee, if one has been appointed, of the need for immediate action. Notification shall be by personal communication or by telephone.

VLBR 4003

EXEMPTIONS

- (a) **Claim of Exemptions.** Whenever exemptions are claimed, the property sought to be exempted must be specifically described and valued, and juxtaposed to the appropriate statute under which the property is claimed to be exempt. General descriptions such as "automobile," "common stock," etc., are not sufficient descriptive terms to claim property as exempt. Citations to a statute must include the relevant subsections, together with the value claimed exempt in order to identify, with specificity, the authority for the claimed exemption. In a joint case, the exemptions claimed on behalf of each debtor shall be separately listed.

VLBR 4004-4006 Reserved

VLBR 4007

DETERMINATION OF DISCHARGEABILITY OF A DEBT

- (a) **Dismissal of Complaints.** Any motion for dismissal of a complaint objecting to discharge must be accompanied by affidavits executed by the plaintiff and the debtor that no consideration has been promised or given to effect the withdrawal, or, if any consideration has been promised or given, the nature and amount thereof.

VLBR 4008

DISCHARGE AND REAFFIRMATION HEARING

- (a) **Discharges.** The Court does not hold the discharge hearing described in 11 USC §524(d), except when a reaffirmation agreement is involved. In lieu of attendance at a discharge hearing, debtor's counsel shall file, and debtor shall sign, a document substantially conforming with Official Vermont Local Bankruptcy Form No. 13. This document shall be filed with the petition. No discharge will be granted until the debtor's attorney has filed the required affidavit.

- (b) **Reaffirmation Agreements.** It shall not be a violation of the stay arising under 11 USC §362 for a creditor with a valid security interest, which may not be avoided under 11 USC §522(f), to negotiate with the debtor, with the consent of the debtor's attorney, the terms of a reaffirmation agreement as a condition precedent to the debtor remaining in possession of the encumbered property during the pendency of the bankruptcy case. The reaffirmation agreement may require the debtor to provide adequate protection (i.e., contract payment and/or interest and/or reasonable depreciation costs and/or insurance). Between the filing of the petition for relief and the reaffirmation hearing, the creditor may not receive payments totaling in excess of seventy-five (75%) percent of the value of the property unless the Court, after notice, Orders otherwise.

If the debtor retains encumbered property, payments provided for in the reaffirmation agreement must be made. Should the proposed reaffirmation agreement be rescinded, the stay Order shall be vacated and the monthly payments made to the secured creditor during the pendency of the case may be retained by the creditor as compensation for use and depreciation of the collateral.

- (c) **Attendance.** Attorneys need not be present at hearings involving reaffirmation agreements. Debtors' attendance is mandatory. Failure by a debtor to appear at a reaffirmation hearing will result in the Court entering an Order directing the reaffirmation agreement be rescinded.

PART V BANKRUPTCY COURTS AND CLERKS

VLBR 5001

COURT AND CLERK'S OFFICE

- (a) **Removal of Records.** No original paper, document, or record in any case shall be removed from its place of filing or custody except by the Clerk, one of the Deputy Clerks, or any person designated by the Bankruptcy Judge or Clerk of Court.
- (b) **Clerk's Office.** Office hours for the Clerk's Office are provided in VLBR 1002(e).

VLBR 5002-5006 Reserved

RECORD OF PROCEEDINGS AND TRANSCRIPTS

- (a) **Proceedings, Hearings, and Meetings.** All proceedings, hearings, and meetings will be recorded by a court reporter or by electronic sound recording devices, except emergency hearings. Any party in a case who deems it necessary to have a written transcript made is responsible for all costs and expenses in connection with the preparation of the transcript. A party so requesting a transcript must provide the Court with two (2) copies of the transcript. When the official reporter is present at a hearing or trial, the Court may also tape record such proceedings for the Court's own use.
- (b) **Telephonic Hearings.** Telephonic hearings pertaining to ex parte relief from stay motions, emergency cash collateral motions, discovery disputes, status conferences, and pre-trial conferences are not normally recorded. Any party wishing to have the hearing recorded must provide a court reporter. If the parties elect to have the telephonic hearing memorialized by tape recorder, a transcript must be provided to the Court within five (5) days following the telephonic hearing.

Telephonic hearings may be conducted on any matter upon application to the Court.

FUNDS OF THE ESTATE

- (a) **Chapter 7.** In all cases under Chapter 7 of the Code, the Internal Revenue Service and the Vermont Department of Taxes are authorized and directed to make income tax refunds in the amount of \$500.00 or less, in the ordinary course of business, directly to debtors, provided, however, that this shall not bar the trustee from seeking to collect direct returns from debtors. All other refunds in excess of this amount shall be made to the trustee, upon the trustee having notified the Internal Revenue Service and the Vermont Department of Taxes of the trustee's appointment.
- (b) **Chapter 11.** In all cases under Chapter 11 of the Code, the Internal Revenue Service and the Vermont Department of Taxes are authorized and directed to make all income tax refunds, regardless of amount, directly to the debtor-in-possession, or trustee appointed in the case, as appropriate.

- (c) **Chapters 12 and 13.** In all cases under Chapters 12 and 13 of the Code, the Internal Revenue Service and the Vermont Department of Taxes are authorized and directed to make all income tax refunds, regardless of amount, directly to the Chapter 12 or 13 debtor, unless the Chapter 12 or 13 trustee notifies the Internal Revenue Service or the Vermont Department of Taxes to send the refund to the Chapter 12 or 13 trustee.

VLBR 5009 Reserved

VLBR 5010

REOPENING CASES

A motion to reopen a case under Federal Rules of Bankruptcy Procedure Rule 5010 shall be in writing and shall be filed with the Clerk of Court. No filing fee is required if a case is reopened to correct an administrative error or actions relating to discharge. The Bankruptcy Judge may direct the Clerk to obtain any required part of the record of the closed case from wherever it is stored.

If a motion to reopen a case is based on issues other than to correct an administrative error or actions relating to discharge, and the motion is granted, a filing fee must be paid to the Clerk within ten (10) days of the Order granting the motion to reopen. If no payment is made the reopening Order will be vacated.

VLBR 5011

ABSTENTION, WITHDRAWAL, CORE AND NON-CORE MATTERS, AND JURY TRIALS

- (a) **Matters Determined by the Bankruptcy Judge.**

- (1) Subject to subsection (a)(3)(B) hereof, all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the Bankruptcy Judge. It is the intention of this Court that the Bankruptcy Judge be given the broadest possible authority to administer cases properly within his/her jurisdiction, and this Rule shall be interpreted to achieve this end.

- (2) Under 28 USC §157(b)(1), the Bankruptcy Judge shall hear and determine all cases under Title 11 and all core proceedings (including those delineated in 28 USC §157(b)(2)) arising under Title 11, or arising in a case under Title 11, and shall enter appropriate orders and judgments, subject to review under 28 USC §158.
 - (3) The Bankruptcy Judge shall hear all non-core proceedings related to case under Title 11.
 - (A) **By Consent:** With the consent of the parties, the Bankruptcy Judge shall conduct hearings and enter appropriate Orders or judgments in the proceeding, subject only to review under 28 USC §158.
 - (B) **Absent Consent:** Absent consent of the parties, the Bankruptcy Judge shall conduct hearings and file proposed findings of fact and conclusions of law and a proposed Order or judgment with the Bankruptcy Clerk. The Bankruptcy Judge may also file recommendations concerning whether the review of the proceedings should be expedited, and whether or not the basic bankruptcy case should be stayed pending District Court termination of the non-core proceedings. The Bankruptcy Clerk shall mail copies of these documents to the parties. Within ten (10) days of mailing, any party to the proceedings may file objections with the Bankruptcy Clerk. Failure to file an objection will be deemed consent to the entry of an Order by the Bankruptcy Judge directing that the proposed findings of fact and conclusions of law be made final. In the event of an objection, any Order shall be issued by the District Judge.
- (b) **Matters To Be Heard and Determined or Tried by District Judges.**
- (1) **Motions to Withdraw Cases and Proceedings to the District Court.** The District Judge shall hear and determine any motion to withdraw in any case or proceeding under 28 USC §157(d). The District Judge may refer the case or proceeding back to the Bankruptcy Judge for proposed findings of fact and conclusions of law and a proposed order of judgment in accordance with the procedures set forth in subsection (a)(3)(B) of this Rule. All withdrawal motions shall be filed only with the Bankruptcy Clerk who will forward them to the District Court. The Bankruptcy Judge may prepare a written recommendation concerning the effect of the withdrawal upon the disposition of the underlying bankruptcy petition and whether the hearing of the motion should be expedited.

- (2) **Trials of Personal Injury and Wrongful Death Tort Claims.** In proceedings in which a personal injury or wrongful death tort claim is required under 28 USC §157(b) to be tried in a District Court, the proceeding shall be administered by the Bankruptcy Judge until it is ready for a final pre-trial conference before a District Judge. The Bankruptcy Judge may prepare a written recommendation concerning the effect of the proceeding upon the disposition of the underlying bankruptcy petition and whether the trial of the proceeding should be expedited, copies of which shall be mailed to parties in accordance with the procedures set forth in subsection (a)(3)(B) of this Rule. The District Judge shall conduct the trial of the proceeding.
- (3) **Motions.**
- (A) The Bankruptcy Judge shall make recommendations concerning:
- (i) a motion by a party under 28 USC §1334(c) for abstention;
 - (ii) a motion by a party under 28 USC §1452(b) for remand; and
 - (iii) a motion by a party under 28 USC §157(b)(5) for a transfer of venue of personal injury or wrongful death tort claims.
- (B) All such motions shall be filed only with the Bankruptcy Clerk and shall first be heard by a Bankruptcy Judge. The Bankruptcy Judge shall make a recommendation concerning the disposition of the motion, copies of which shall be mailed to the parties in accordance with the procedures set forth in subsection (a)(3)(B) of this Rule. The parties may consent to the Bankruptcy Judge entering a final Order in these motions.
- (c) **Jury Trial Before a Bankruptcy Judge.** Jury trials before a Bankruptcy Judge shall be held as permitted by applicable law. Issues arising under §303 of the Code shall be tried by the Bankruptcy Judge without a jury.
- (1) **Impaneling a Jury.** When a jury trial is to be conducted, the Bankruptcy Clerk shall request the Jury Clerk of the District Court to summon a panel of jurors.

- (2) **Number of Jurors and Alternates.** Unless otherwise ordered, the jury in a contested matter or adversary proceeding shall consist of six (6) persons. In the Court's discretion, one or more alternate jurors may be impanelled to sit with the regular jury.
- (3) **Voir Dire.** Unless otherwise ordered, interrogation of prospective jurors on voir dire examination shall be conducted by the Court. Counsel shall submit written questions to the Court prior to the voir dire examination. The Court, in its discretion, may permit questions to be submitted orally at the side of the bar during voir dire.
- (4) **Jury Charges.** Unless otherwise ordered, requests to charge shall be submitted in duplicate to the Court no later than five (5) business days prior to the commencement of trial. Copies thereof then also must be served upon opposing counsel. The Court will schedule a hearing on the proposed charges at least one (1) day prior to trial. Prior to the close of proof, if submitted at the earliest possible time and if not reasonably anticipated prior to the trial, additional written requests to charge may be considered by the Court. Requests shall be numbered, shall be on separate pages, and shall contain any references to pertinent authorities (with copies thereof, if so directed by the Court) which the party wishes the Court to consider.
- (d) **Appeals to the District Court.** All appeals in core matters, in non-core matters heard by consent, and appeals of interlocutory Orders entered by the Bankruptcy Judge in non-core matters heard under subsection (a)(3)(B) of this Rule, shall be taken in the same manner as appeals in civil proceedings, and in the time provided by the Federal Rules of Bankruptcy Procedure.
- (e) **Filing of Papers.** While a case or proceeding is pending before a Bankruptcy Judge, or prior to the docketing of an appeal in the District Court as set forth in the Federal Rules of Bankruptcy Procedure, all pleadings and other papers shall be filed with the Bankruptcy Clerk. After the case or non-core proceeding is assigned to a District Judge, or after the District Clerk has given notice to all parties of the date on which the appeal was docketed, all pleadings shall bear a civil case number in addition to the bankruptcy case number(s) and shall be filed only with the District Court Clerk.

- (f) **Submission of Files to the District Court; Assignment to District Judges.** After the expiration of the time for filing objections under subsection (a)(3)(B) hereof, upon receipt of any Order by a District Judge under 28 USC §157(d), or upon the docketing of an appeal in the District Court as specified in subsection (d) hereof, the Bankruptcy Clerk shall submit the file for the case or proceeding to the District Court Clerk. The District Court Clerk shall affix a civil number to each submission, and shall make the assignment to a District Judge in accordance with the usual system for assigning civil cases.

**PART VI
COLLECTION AND LIQUIDATION
OF THE ESTATE**

VLBR 6001-6003 Reserved

VLBR 6004

USE, SALE, OR LEASE OF PROPERTY

- (a) **Conflict of Interest.** The following persons shall not directly or indirectly purchase property from any bankruptcy estate: The Bankruptcy Judge and Clerk of Court; employees of the Bankruptcy Judge and the Clerk of Court; any person who shall then be serving as trustee, examiner, disbursing agent, appraiser, auctioneer, accountant, or attorney for a trustee in any matter before this Court, or employees, agents, or family of such persons. Sales or purchases in violation of this Rule are void and no title passes to the purchaser.
- (b) **Notice.** It is the duty of the trustee to meet the notice requirements of Federal Rules of Bankruptcy Procedure Rules 2002(a)(2), (c), and (i), and 6004 regarding sales. A copy of the notice including a certificate of mailing shall be filed by the trustee with the Court.
- (c) **Hearing.** Use, sale, or lease of property will generally be on notice with opportunity to object and request a hearing (**see**, VLBR 9007). Conditional hearing dates may be obtained from the Clerk's Office. If a party in interest requests a hearing concerning a proposed sale, the trustee shall delay any action until a hearing can be held by the Court on the issue in dispute. Where the contest involves only certain readily identified items of property, sale of the remaining undisputed items may take place prior to the hearing. Pending a hearing, and for cause shown, the Court may order the action to proceed on such conditions as will protect the interests of all parties.

No Court Order will be required to perfect an undisputed sale of property completed by the trustee in accordance with the terms of this Rule. In its stead, the trustee may file with the Court a report of his actions as required by Federal Rules of Bankruptcy Procedure Rule 6004(f)(1).

- (d) **Sale Outside the Ordinary Course of Business.** In a Chapter 11 case, if the debtor seeks authority to sell property of the estate under §363(b) of the Code prior to the entry of an Order of confirmation, and contemplates a sale of all or substantially all of the assets of the estate, the notice of motion shall contain a clear and conspicuous statement to that effect in addition to the information required under Federal Rules of Bankruptcy Procedure Rule 2002(c). The motion shall specify the extent to which, if any, the proceeds of sale shall be used to benefit each class of creditors, the extent of the debtor's liabilities, and the net value of any of the remaining assets not subject to the proposed sale. The motion shall further articulate the business justification for disposing of estate assets before a disclosure statement has been approved or a plan confirmed.
- (e) **Obtaining Credit.** If priority for obtaining credit or incurring debt is sought under §364(c) or (d) of the Code, the motion shall expressly state whether priority over any or all administrative expenses specified in §§503(b)(2) or 507(b) of the Code is sought. Unless otherwise authorized by the Court, any request for relief under §364(c) or (d) shall be made on notice to all creditors, equity security holders, the trustee, if any, and the U.S. Trustee.
- (f) **§363(f) Sales.** All §363(f) sales must be on written motion, unless the Court directs otherwise, with notice to all parties. The notice shall contain at a minimum; the type of sale, names of prospective purchasers, and if a corporation or partnership, names of all creditors, and any other information which provides due process to all creditors and parties in interest and ensures the integrity of the bankruptcy system. After the sale, on motion, an Order must be entered confirming the sale.
- (g) **Appraisal Reports.** Any appraisal reports shall be prepared in at least quadruplicate, the original and one copy of which shall be filed with the Court and remaining copies furnished to the trustee and the U.S. Trustee. Other parties may receive copies as appropriate. Upon the filing of the appraisal report, it shall be impounded by the Court and its contents shall not be divulged and, unless the Court otherwise directs, access to such information may be had only by the Court, the trustee, attorney for the trustee, and the U.S. Trustee until the completion of the sale of the appraised property.

APPRAISERS AND AUCTIONEERS

- (a) **Compensation.** Unless the Court orders otherwise for cause shown, compensation and reimbursement of expenses shall be allowed to an auctioneer for sale of property as hereinafter specified.
- (1) The auctioneer shall be allowed commissions on the gross proceeds of each sale conducted by him at the following rate:
- (A) 10% of any gross proceeds of sale on the first \$50,000 or less;
 - (B) 8% of any amount in excess of \$50,000 but not in excess of \$75,000;
 - (C) 6% of any amount in excess of \$75,000 but not in excess of \$100,000;
 - (D) 4% of any amount in excess of \$100,000 but not in excess of \$125,000;
 - (E) 2% of any amount in excess of \$125,000.
- (2) The auctioneer shall be reimbursed for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising, and insurance, but excluding workmen's compensation, social security, unemployment insurance, other payroll taxes, and normal overhead. If directed by the trustee to transport goods, the auctioneer shall be reimbursed for expenditures related thereto. No travel expense shall be allowed except as Ordered by the Court. Requests for unusual and extraordinary expenses (for example, a farm case) may be made on application, and, if possible, in advance of the expenditures.
- (b) **Purchase Prohibited.** An auctioneer or officer, director, stockholder, agent, employee, or any family member of the auctioneer shall not purchase directly or indirectly, or have a financial interest in the purchase of, any property of the estate which the auctioneer has been employed to sell.
- (c) **Bond.** An auctioneer employed with Court approval shall not act until he gives in each estate, at his own expense, a surety bond, or a blanket bond if involved in more than one case, in favor of the United States of America, to be approved by and in such sum as may be fixed by the Court, conditioned upon:

- (1) the faithful and prompt accounting for all monies and property which may come into his possession as auctioneer;
- (2) compliance with all Rules, Orders, decrees of the Court; and
- (3) the faithful performance of his duties in all respects.

In lieu of a bond in each case, an auctioneer may be permitted to file, at his own expense, a blanket bond covering all cases in which he may act. Such blanket bond shall be in favor of the United States of America, and shall be in an amount sufficient to cover the aggregate value as appraised of all property to be sold.

- (d) **Report of Sale.** The auctioneer shall file a report with the Clerk and the U.S. Trustee within twenty (20) days after conclusion of the sale. The report of sale shall set forth:

- (1) the time, date and place of sale;
- (2) the gross amount of the sale, and when property is sold in lots, a description of the items in each lot, the quantity in each lot, the amount received for each lot, and the bulk bid(s) received;
- (3) an itemized statement of expenditures, disbursements, and commissions allowable under this local Rule, including the names and address of the payee, together with the original receipts and cancelled checks, or true copies thereof, for such expenditures or disbursements. Where labor charges are included, there shall be specified the days worked and the number of hours worked in each day by each person and such person's social security number. If the cancelled checks are not available at the time the report is filed, it shall be so stated, and the cancelled checks shall be filed as soon as they become available;
- (4) where the auctioneer has a blanket insurance policy covering all sales conducted by him, for which original receipts and cancelled checks are not available, an explanation of how the insurance expense charged to the estate was computed;
- (5) the names of all purchasers at the sale;
- (6) the sign-in sheet, indicating the number of people attending the sale;
- (7) the items for which there was no bid and the disposition of any such items;

- (8) the terms and conditions of sale which were read in full to the audience immediately prior to the commencement of the sale;
 - (9) a statement of the manner and extent of advertising of the sale;
 - (10) a statement of the manner and extent of the availability of the items for inspection;
 - (11) sales tax; and
 - (12) such other information as the Clerk or the U.S. Trustee may request.
- (e) **Affidavit to Accompany Report of Sale.** The auctioneer shall submit with the report of sale an affidavit stating:
- (1) the authority under which he conducted the auction sale and the date and place of the sale; and
 - (2) that the labor and other expenses incurred on behalf of the estate as listed in his report of sale were necessary, true, and accurate, and that the gross proceeds of sale exclusive of his expenses were remitted to the trustee or debtor-in-possession and the date of such remittance.
- (f) **Application for Commission.** An auctioneer shall apply to the Court for approval of commissions on not less than ten (10) days' notice to the U.S. Trustee, the trustee, if any, the debtor-in-possession, and the committee. No such application shall be granted unless the report referred to in this Rule has been filed. Fee applications of less than \$5,000 in gross amount shall be reviewed by the Court without notice or hearing.

VLBR 6006 Reserved

VLBR 6007

ABANDONMENT OR DISPOSITION OF PROPERTY

- (a) **Application and Motion.** Abandonment of property may be obtained by use of the notice and opportunity provisions of these Rules.
- (b) **Notice of Abandonment.** Notice of any proposed abandonment shall be provided by the applicant or movant, and filed with the Court. Said notice shall be provided to all parties in interest, the U.S. Trustee, the debtor, and the debtor's attorney.

- (c) **Hearing.** If a timely written objection is made as prescribed by subsection (b) of this Rule, the Court shall set a hearing on notice to the persons as the Court may direct. The notice of abandonment may set a time for hearing objections to abandonment. Such date may be obtained from the Clerk of Court.

VLBR 6008-6010 Reserved

**PART VII
ADVERSARY PROCEEDINGS**

VLBR 7001

SCOPE OF RULES OF PART VII

- (a) **Claim of Unconstitutionality.** If at any time prior to the trial of any adversary proceeding, to which neither the United States or an individual State, nor any agency, officer, or employee of either is a party, a party draws in question the constitutionality of an Act of Congress or a State statute affecting the public interest, such party shall, in writing, notify the Court of the existence of such question and specifically identify the statute and the respects in which it is claimed to be unconstitutional. This will enable the Court to comply with the requirements of 28 USC §2403(a) and (b).

VLBR 7002-7015 Reserved

VLBR 7016

PRE-TRIAL PROCEDURE; FORMULATING ISSUES

- (a) **Notice; Appearance.** Counsel for the plaintiff will be notified of a pre-trial conference by summons scheduling such Order or other notice as the Court may direct. Counsel for the plaintiff is responsible for advising each defendant and each defendant's attorney, if known, of the pre-trial conference and serving each defendant and each defendant's attorney, if known, with a copy of the summons and notice of pre-trial conference, complaint, and Preliminary Pre-Trial Order (Official Vermont Local Bankruptcy Form No. 15). Attendance of all counsel is required. If an attorney for a party fails to appear at such conference, or otherwise fails to abide by the requirements of this Rule and the Preliminary Pre-Trial Order, the Court may take such action, including the imposition of sanctions, as the Court may deem appropriate.

(b) **Exhibits; Production, Retention, and Sale.**

- (1) **Marking.** In an adversary proceeding or a contested matter, the exhibits shall be marked by counsel or the parties prior to trial or hearing. If more than ten (10) exhibits are to be introduced, they must be labeled and placed in a binder. An index to all direct exhibits must be produced. When practical, all documentary exhibits at a minimum shall be prepared in sufficient quantity to provide copies for the witness, the Court, all opposing counsel, the examining attorney, and the Clerk's Office.
- (2) **Retention by Attorneys.** Unless the Court otherwise directs, exhibits (except those produced by non-parties) shall not be filed with the Clerk but shall be retained in the custody of the respective attorneys or persons who produced them in Court. Upon submission to the trier of fact, all exhibits which were received into evidence shall be delivered to the Clerk. Following decision or verdict, exhibits will be returned to the parties. In the case of an appeal or other review by an appellate Court, all exhibits necessary to perfect the appeal shall be made available for inclusion in the record on appeal. Following appeal, the Clerk will return the exhibits.
- (3) **Non-Party Exhibits.** Exhibits produced by non-parties may be held by the Clerk or a party as the Court may direct. Whenever practicable, copies of such exhibits shall be substituted for originals. Upon expiration of the time allowed for appeal, or following an appeal, any originals retained by the Clerk or a party shall be returned to non-parties.
- (4) **Photocopy Size.** All photocopies of original exhibits that are submitted as part of the pleading, disclosure statement, plan, operating report, proof of claim, or other document filed in the Clerk's Office, shall be on 8½" x 11" paper.

- (c) **Status Conference.** Status conferences in adversary proceedings shall generally be held by telephone unless the Court Orders otherwise. A status conference report, substantially in compliance with Official Vermont Local Bankruptcy Form No. 16, shall be filed at least five (5) business days prior to the scheduled conference.

VLBR 7017-7025 Reserved

GENERAL PROVISIONS GOVERNING DISCOVERY

- (a) **Limits on Interrogatories.** Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court, no party shall serve any other party, at any one time or cumulatively, more than thirty (30) written interrogatories, including all parts and sub-parts. Interrogatories need not be filed with the Court.
- (b) **Limits on Depositions.** Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court, no party shall take more than five (5) depositions, whether upon oral examination under F.R.Civ.P. 30 or upon written questions under F.R.Civ.P. 31, upon non-parties. Any party may be deposed. Depositions need not be filed with the Court.
- (c) **Requirement of a Writing.** All objections to interrogatories, depositions, requests, or applications under F.R.Civ.P. 26 through 37, as well as all motions and replies about discovery matters, shall be in writing and recite with specificity the offending interrogatory, deposition, request, or application. If times does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.
- (d) **Objections to Discovery Process.** An objection to any interrogatory, deposition, request, or application under F.R.Civ.P. 26 through 37 shall be filed within fifteen (15) days after service of the offending interrogatory, deposition, request or application, unless otherwise ordered by the Court. Any such objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter not specifically objected to.
- (e) **Motions to Compel.** After a discovery request is objected to or not complied with within the time, and if not otherwise resolved, it is the responsibility of the party initiating discovery to quickly place the matter before the Court by motion under F.R.Civ.P. 37 to compel to answer, production, designation, or inspection. Such motion must be accompanied by a brief as required by VLBR 9013(b).
- (f) **Other Discovery Motions.** Motions for a protective order under F.R.Civ.P. 26(c) and motions to compel physical or mental examination under F.R.Civ.P. 35 shall be accompanied by a brief as required by VLBR 9013(b).

Replies to discovery motions shall be filed within ten (10) days after service of the motion and brief unless otherwise ordered by the Court. Response, if any, to all other discovery motions shall also be filed within ten (10) days.

- (g) **Compliance with Discovery Orders.** After the Court has ruled on a discovery motion, any answer, production, designation, inspection, or examination required by the Court shall be done within ten (10) days after the entry of the Order of the Court, unless otherwise ordered by the Court.
- (h) **Failure to Comply with Order.** Should a party fail to comply with an Order of the Court concerning discovery motions, it is the responsibility of the party objecting to such failure to comply to place the matter before the Court by a proper motion for supplementary relief under F.R.Civ.P. 37. Such motion must be accompanied by a written brief as required by VLBR 9013(b).
- (i) **Consultation Among Counsel.** Counsel are encouraged to participate in pre-trial discovery conferences to decrease in every way possible the filing of unnecessary discovery motions. No motion concerning discovery matters may be filed until counsel shall have explored with opposing counsel the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue.
- (j) **Unnecessary Discovery Motions or Objections.** The presentation to the Court of unnecessary discovery motions, and the presentation to another party or non-party or unnecessary discovery requests of any kind, as well as unwarranted opposition to proper discovery proceedings, will subject the offender to appropriate remedies and sanctions, including the imposition of costs and counsel fees.
- (k) **Sanctions.** Should any party or his attorney fail to comply with any of the provisions of this Rule, or otherwise fail or refuse to meet and confer in good faith in an effort to narrow the area of disagreement concerning discovery, sanctions provided by F.R.Civ.P. 37 may be imposed.

VLBR 7027-7039 Reserved

VLBR 7040

ASSIGNMENT OF CASES AND PROCEEDINGS

Cases and proceedings, excluding §341(a) Meetings, are heard at the Federal District Courtroom, Federal Building, 87 State Street, in Montpelier, Vermont and at the U.S. Bankruptcy Court, Opera House, 67 Merchants Row, in Rutland, Vermont.

Court is held in Montpelier and in Rutland at least once a month.

Evidentiary hearings and trials that are expected to exceed one (1) hour are generally scheduled for non-regular Court days, usually a Thursday or Friday, in Rutland.

The Clerk and the Court will make every effort to assign a case to the location that is most convenient to the litigants and which will result in the least cost. Parties desiring a specific location should bring their request to the attention of the Courtroom Deputy.

Hearings that must be scheduled on an expedited basis will be heard at the geographical location convenient to the Court.

VLBR 7041-7054 Reserved

VLBR 7055

DEFAULT

- (a) **Entry of Judgment.** A judgment of default may be entered by the Clerk upon application of default with affidavits and amount due, including costs and disbursements if any, filed by the party entitled to judgment. The affidavit shall include a statement that no defense or other response of any kind has been received or if received shall detail the defense or other response received. If the party in default has appeared in the proceeding, notice of the application for judgment shall be served under the Rule incorporating F.R.Civ.P. 55(b)(2).

VLBR 7056-7087 Reserved

PART VIII APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

VLBR 8001 Reserved

VLBR 8002

TIME FOR FILING NOTICE OF APPEAL

- (a) **Late Filed Appeal.** Late filed notices of appeal may be dismissed by the Bankruptcy Judge.

VLBR 8003-8019 Reserved

**PART IX
GENERAL PROVISIONS**

VLBR 9001-9002 Reserved

VLBR 9003

PROHIBITION OF EX PARTE CONTACTS

Any party in interest, any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the Bankruptcy Judge, Judge's secretary, or law clerk concerning any disputed issue of fact or law in a particular case or civil proceeding. Nothing in this Rule shall be construed to limit or prohibit ex parte presentation of emergency matters such as emergency ex parte applications contemplated by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure or these Local Rules.

Unless otherwise Ordered by the Court, motions that may be heard and considered ex parte include the following:

- (1) applications for approval of employment of professional persons;
- (2) motions for enlargement or reduction of time;
- (3) motions for shortening or limiting notice;
- (4) motions for Rule 2004 examinations; and,
- (5) motions for approval to reconsider, alter, or amend a judgment or Order.

The Court, in its discretion, may Order a hearing on any ex parte application or motion at any time.

VLBR 9004-9006 Reserved

GENERAL AUTHORITY TO REGULATE NOTICES

When authority to act or relief is sought which can only be authorized or granted upon notice or "after notice and hearing" as such phrase is defined in 11 USC §102, the party requesting authority to act or relief shall serve the pleading so requesting and/or notice of the authority or relief sought as follows:

- (a) **Parties to be Noticed.** Unless Federal Rules of Bankruptcy Procedure or local Rules otherwise provide, the pleading or notice must be served upon the following parties in interest at a minimum including, but not limited to, any party affected:
- (1) **In a Chapter 7 Case:** debtor and debtor's attorney, if represented, any trustee, the U.S. Trustee, upon the unsecured creditors who have filed claims if an asset case, any party requesting notice, any intervening attorney, and any party known to have an adverse interest;
 - (2) **In Chapter 11 & Chapter 12 Cases:** debtor, debtor's attorney, if represented, the U.S. Trustee, the standing trustee, all lien claimants as scheduled by the debtor, the twenty (20) largest unsecured creditors, or, if a creditors' committee has previously been appointed, all members of such creditors' committee and/or any attorney for such committee, equity shareholders or any committee representing equity shareholders and/or its attorney, and any party requesting notice;
 - (3) **In a Chapter 13 Case:** debtor, debtor's attorney, if represented, the Chapter 13 trustee, the U.S. Trustee, and all claimants as scheduled by the debtor.
- (b) **Time.** The pleading or notice must conspicuously contain the following statement (see, VLBR 9076):

**ANY PARTY WHO OBJECTS TO THE _____
MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT, P.O. BOX
6648, RUTLAND, VERMONT 05702-6648, AND SERVE ON THE MOVANT/
ATTORNEY FOR THE MOVANT, A WRITTEN OBJECTION ON OR BEFORE 4:00
P.M. ON _____. IF NO OBJECTIONS ARE TIMELY FILED,
THE MOTION SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY
ISSUE AN ORDER APPROVING/GRANTING THE _____
WITHOUT FURTHER HEARING.**

- (c) **Matrix.** When the Federal Rules of Bankruptcy Procedure or the local Rules require or permit that notice be given to creditors and other parties in interest by a person other than the Clerk of the Bankruptcy Court, the Clerk shall provide the party with a mailing matrix.
- (d) **Mailing.** All notices and documents required to be sent by a person other than the Clerk of Court shall be served, at a minimum, by first class mail, postage prepaid.
- (e) **Action.** Any notice shall state with sufficient particularity the relevant Code section and Rule of procedure, if applicable, the movant relies upon.
- (f) **Limitation.** In the event that the Court has entered an Order limiting the parties to whom notice may be given or copies must be sent or limiting the time to respond, the certificate shall state the date and substance of such Order to the extent that the existence of and compliance of such Order may be determined from such certificate.

VLBR 9007 COMMENT

Subsection (a) of this Rule does not derogate from Federal Rules of Bankruptcy Procedure Rules 2002, 6007, 9014, or §363(f) of the Code, or any other Rule or Code provision requiring notices, but is merely a minimum due process requirement.

VLBR 9008-9009 Reserved

VLBR 9010

REPRESENTATION AND APPEARANCES; POWERS OF ATTORNEY

- (a) **Acceptance of Employment.** An attorney who accepts employment by a debtor in connection with the filing of a case under Title 11, United States Code, has the duty to render complete and competent services and may not withdraw from that undertaking without permission of this Court.
- (b) **Withdrawal or Substitution of Attorney for Debtor.** An attorney who has appeared as attorney of record for the debtor may be relieved or substituted only by Order of the Court. Such attorney may not withdraw from a case or proceeding without leave of the Court granted by Order entered for cause shown, and in the discretion of the Court, upon notice and hearing. Any application or notice of withdrawal must be accompanied by an affidavit and a statement of status of the case.

- (c) **Withdrawal or Substitution of Other Attorneys.** Withdrawal or substitution of other attorneys may be accomplished by providing written notice to the Court and any other attorney of record in the proceeding.
- (d) **Exception.** This Rule does not apply to an attorney who has appeared solely for the purpose of filing a proof of claim or interest.
- (e) **Pro Se Designation of Address.** Unless the Court orders otherwise, an individual appearing pro se shall file with every notice or pleading a designation of the individual's residence address and telephone number.
- (f) **Courtroom Procedures.** The following procedures are to be followed in all proceedings in Open Court:
 - (1) There shall be no oral confrontation or colloquy between opposing attorneys.
 - (2) All objections shall be stated with specificity prior to any argument or explanation of same, i.e., leading, hearsay, improper foundation, etc.
 - (3) During the testimony of a witness, attorneys shall not approach the witness box or the Court Reporter without the Court's approval. Witnesses shall be treated with dignity and respect.
 - (4) Counsel shall request of the Clerk the use of blackboards, view boxes, or other audio-visual aids sufficiently in advance of the need so that they may be set up while the Court is not in session.

VLBR 9011-9012 Reserved

VLBR 9013

MOTIONS: FORM AND SERVICE

- (a) **Definition.** The term "motion" shall mean motion, request, or other proceeding in the nature of a motion in which a party seeks an Order or determination of the Court. The term "motion" shall not refer to a summons and complaint, an appeal, an ex parte motion, a motion for relief from stay, a request for ruling on an uncalendared motion, or an application.

- (b) **Form.** All motions, including objections to interrogatories and requests for admissions, shall be in writing and accompanied by at least one (1) copy. Motions shall be supported by a memorandum of law filed or presented with the motion. Motions to dismiss petitions, applications for compensation, objections to claims or exemptions, and matters arising in a non-adversarial context, the granting of which is mandated by statute, after notice, and in the absence of objection, shall be supported by affidavit where appropriate and need not be accompanied by memoranda unless legal issues are raised.
- (c) **Memoranda of Law.** Memoranda should be as succinct as the circumstances of the case permit. Memoranda shall include a concise statement of each basis for the pleading and limited citations to cases or other authority. Where a movant is required to submit a memorandum, a memorandum opposing the motion shall be filed within ten (10) days after service of the motion or within such extended time as may be allowed by the Court. A reply memorandum may be filed at the discretion of the movant within five (5) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion. Any memorandum citing cases or statutes other than Vermont's bankruptcy cases and statutes must provide one copy of each cited case and statute with the memorandum. Failure to provide a required responsive pleading may result in the Court granting the motion.
- (d) **Motions Not Requiring Memoranda of Law.** Unless otherwise directed by the Court, memoranda of law are not required of any party with respect to the following motions:
- (1) for extension of time for the performance of an act required or allowed to be done, provided that the request is made before the expiration of the period originally prescribed, or as extended by previous Order;
 - (2) to continue a pre-trial conference, hearing or motion, or the trial of an action;
 - (3) for a more definite statement;
 - (4) to add additional parties;
 - (5) to amend pleadings;
 - (6) to file supplemental pleadings;
 - (7) to intervene;
 - (8) for substitution of parties;

- (9) to stay proceedings to enforce judgment;
- (10) joint motions to dismiss; and
- (11) to withdraw as counsel.

Although the above listed motions do not require memoranda of law, such motions must state the grounds therefor and cite any applicable Rule, statute, or other authority justifying the relief sought.

- (e) **Motions for Continuance.** Motions to continue a pre-trial conference, a hearing on a motion, or the trial of any action shall not be granted by the mere agreement of counsel. Any such motion, verbal or written, must be considered by the Court, and no such continuance will be granted except for good cause and upon such terms and conditions as the Court may impose.
- (f) **Telephonic Motions.** The scheduling of telephonic motions within the normal calendar of the Court, as well as those on an emergency basis, are encouraged by the Court. Due to equipment limitation, the movant must arrange the telephonic conference. Requests for a telephonic conference shall be directed to the Courtroom Deputy.
- (g) **Service of Motion and Response.** The movant and respondent shall serve copies of their respective papers upon all opposing counsel, together with a certificate of service of same.
- (h) **Attendance at Hearings.** Any party either proposing or opposing a motion or other application, who does not intend actively to pursue or oppose the same, shall immediately notify all counsel of record and the Clerk of Court so that the Court and counsel are not required to devote unnecessary attention to the matter. Unless excused by the Court from attendance, failure of counsel to be present at the hearing noticed for any motion, or to attend at the time to which the hearing is continued, shall be deemed either a waiver of the pleading, objection, or motion if such counsel represents the moving party, or a consent to the sustaining of the pleading or objection or the granting of such motion if such counsel represents the responding party.

VLBR 9013 COMMENT

The purpose of subsection (f) of this Rule is to reduce costs to litigants by reducing travel time of attorneys and the litigants.

VLBR 9014-9026 Reserved

REMOVAL

(a) Application.

- (1) Form and Content.** A party desiring to remove any civil action or proceeding from a Federal or a State Court shall file with the Bankruptcy Court a verified application containing a short and plain statement of the facts warranting removal, together with a copy of all process and pleadings.
- (2) Time for Filing by Defendant.** The application for removal of a civil proceeding shall be filed within thirty (30) days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty (30) days after the service of summons upon the defendant if such initial pleading has then been filed in Court and is not required to be served on the defendant, whichever period is shorter.
- (3) Time for Filing by Any Party.** If the civil action or proceeding stated by the initial pleading is not within the jurisdiction of the Bankruptcy Court when initiated, an application for removal may be filed by a party within thirty (30) days after the meeting of creditors first scheduled in the case under the Bankruptcy Code, unless within that time the Court grants an extension.

- (b) Bond.** Except where a trustee or debtor-in-possession in a case under the Bankruptcy Code or the United States is an applicant, each application for removal of a civil action or proceeding shall be accompanied by a bond with good and sufficient surety conditioned that the party will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the civil action or proceeding was not removable or was improperly removed.
- (c) Notice.** Promptly after the filing of the application and bond, when required, the party filing the removal application shall give written notice thereof to all adverse parties and shall file a copy of the application with the Clerk of the Court from which the civil action or proceeding was removed which shall effect the removal and the parties shall proceed no further in that Court unless and until the case is remanded.

(d) **Procedure after Removal.**

- (1) In all civil actions or proceedings removed to the Bankruptcy Court, the Bankruptcy Court may issue all necessary Orders and process to bring before it all proper parties whether served by process issued by the Court from which the case was removed or otherwise.
- (2) The Bankruptcy Court may require the applicant to file with the Bankruptcy Clerk copies of all records and proceedings in the Court from which the case was removed.

(e) **Process after Removal.** In all civil actions or proceedings removed to the Bankruptcy Court in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in the Bankruptcy Court. This subsection shall not deprive any defendant on whom process is served after removal of his right to move to remand the case.

(f) **Time for Filing a Demand for Jury Trial.** If at the time of removal all necessary pleadings have been served, a party entitled thereto shall be accorded a trial by jury, as appropriate, provided the demand therefor is served within twenty (20) days after the application for removal is filed if the party entitled to trial by jury is the applicant; otherwise within twenty (20) days after service of the notice of filing of the application for removal on the party entitled to trial by jury. A party making an express demand for trial by jury prior to removal, in accordance with Federal or State law, need not make a demand after removal. If State law applicable in the Court from which the case is removed does not require the parties to make express demands to claim trial by jury, the parties need not make demands after removal, unless the Bankruptcy Court directs them to do so within a specific time. The Bankruptcy Court may make such a direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver of trial by jury.

- (g) **Record Supplied.** Where a party is entitled to copies of the records and proceedings in any civil action or proceeding in a Federal or a State Court, to be used in the Bankruptcy Court, and the Clerk of such Court, on demand, and the payment or tender of the legal fees, fails to deliver certified copies, the Bankruptcy Court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon, such proceedings, trial and judgment may be had in such Bankruptcy Court, and all such process awarded, as if certified copies had been filed in the Bankruptcy Court.
- (h) **Remand.** If at any time before final judgment it appears that the civil action or proceeding was removed improvidently or without jurisdiction, the Bankruptcy Court shall remand the case and may order the payment of just costs. A certified copy of the Order of remand shall be mailed by the Bankruptcy Clerk to the Clerk of the Court from which the civil action or proceeding was removed and that Court may thereupon proceed with the case.

VLBR 9028 Reserved

VLBR 9029

LOCAL BANKRUPTCY RULES

(a) **Matters Not Covered by Rules.**

- (1) **Consistent Practice.** In any matter not covered by these Rules, the Court may regulate its practice in any manner not inconsistent with the Federal Rules of Bankruptcy Procedure.
- (2) **Suspension of Rules.** The Court, upon its own motion or the motion of any party, may change or dispense with any of these Rules if the interests of justice so require.
- (3) **Good Cause.** A motion for waiver of these Rules may be approved if the movant clearly demonstrates good cause for such waiver.

VLBR 9030-9034 Reserved

VLBR 9075

PROPOSED ORDERS

- (a) **Submission of Orders.** Proposed Orders must be separate documents, i.e., not tagged onto a motion, application, etc. All proposed Orders must be accompanied by pre-addressed, postage pre-paid envelopes, and a Clerk's certificate of mailing, sufficient in number for the Clerk's Office to mail copies of the Order to all necessary parties.
- (b) **Lodging of Orders.** Proposed Orders submitted for signature may be lodged with the Clerk for ten (10) days upon request of any party. Any party objecting to a lodged Order must submit an objection in writing, with a certificate of service, within the ten (10) day period. The Court will resolve any filed objections without further hearing.
- (c) **Signature on Proposed Orders.** The Court will not sign proposed Orders where the Court's date of entry and signature line are situated on a separate page. There must be a continuity of the language of the proposed Order from the previous page.

VLBR 9075 COMMENT

The purpose of subsection (a) of this Rule is to expedite the mailing of Orders to litigants and parties in interest.

VLBR 9076

ORDER ON NOTICE AND OPPORTUNITY

Motions or stipulated motions for relief from stay, motions for lien avoidance, stipulations of settlement, and fee applications of \$2,000 or more from professionals (see, VLBR 2002(f)) will be processed by the Clerk on an Order on notice and opportunity basis stating a due date for objections. If the Clerk receives no objections, an Order will be signed. All notice and opportunity motions must be accompanied by a proposed notice and opportunity Order, with the due date for filing an objection left blank (see, Official Vermont Local Bankruptcy Form No. ____) and a pre-addressed, postage pre-paid envelope to the movant. The movant is to determine the parties to be served. In addition to the foregoing, the movant must submit a proposed Order on the action requested (see, VLBR 9075(a) requirements).

VLBR 9077

PROPOSED NOTICE OF HEARING

Pleadings (applications, motions, reaffirmation agreements, objections to proofs of claims and exemptions, etc.) other than relief from stay motions, lien avoidance motions, and certain professional fee applications (**see**, VLBR 2002(f) and 9076) may require a hearing. All pleadings that will require a hearing must be accompanied by a proposed notice of hearing, with the time and date left blank for completion by the Clerk (**see**, Official Vermont Local Bankruptcy Form No. ____) and a pre-addressed, postage pre-paid envelope to the movant. The movant is to determine the parties to be served. Following service, the movant must submit a certificate of service to the Clerk.

VLBR 9078 Reserved

VLBR 9079

DOCUMENTS SUBMITTED

- (a) **Original and One (1) Copy.** Unless otherwise specified in these Rules, any paper, including routine correspondence and transmittal letters, submitted to the Clerk must be accompanied by at least one (1) copy of such paper. Documents submitted to the U.S. Trustee for eventual forwarding to the Clerk must be accompanied by at least two (2) copies.
- (b) **8½" x 11" Paper Size.** Any paper submitted to the Clerk for filing shall be on standard business size 8½" x 11" paper. Documents originated on legal size (8½" x 14") paper and which can be mechanically reduced to 8½" x 11" size shall be reduced before filing with the Clerk.
- (c) **Cover Sheets.** An adversary proceeding complaint must be accompanied by a cover sheet.

VLBR 9080

GENDER NEUTRAL

- (a) **Reference to Gender.** Any reference to the feminine gender or the male gender shall be deemed a reference to the other.

VLBR 9081

CERTIFICATE OF SERVICE

All certificates of service filed with the Clerk's Office shall have annexed thereto a copy of the document served or a sufficient description thereof, and a copy of the matrix used for service or a specific listing with the names and addresses of the parties served.

VLBR 9082

FEDERAL BAR NUMBERS

All pleadings, documents, letters, etc., when signed by an attorney, must contain the attorney's Federal Bar Number for the State of Vermont, which may be obtained from the U.S. District Court for the District of Vermont.

Out-of-state attorneys who have not registered with the U.S. District Court for the District of Vermont must apply for admission or provide the name and address of local counsel for the District of Vermont.

VLBR 9083

FEE PAYMENTS VIA CREDIT CARDS

Fees may be paid to the Clerk via an attorney's VISA or MasterCard credit card. The fees charged will appear on the credit card statement as U.S. Bankruptcy Court - Vermont. Payment may be made by physically presenting the card at the Clerk's Office at the time a filing fee/request for services is expected to be paid. Alternatively, payment may be made by advising the Clerk by mail, on a separate sheet of paper accompanying the relevant documents, of the type of card, the name as is printed on the card, the credit card number, the expiration date, and authorization for the Clerk to charge to your card. Your credit card will therefore remain confidential. We require a separate authorization for each transaction.

Emergency documents requiring a fee will be accepted by FAX if accompanied by a separate sheet of paper containing all the foregoing credit card information.

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***** Amended May 1, 1992 *****

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